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Letter dated 27 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 July 2003 (S/2003/737).

The Counter-Terrorism Committee has received the attached third report from Armenia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 24 October 2003 from the Permanent Representative of Armenia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter of 18 June 2003, I have the honour to enclose herewith the second supplementary report submitted by the Republic of Armenia pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

The Government of the Republic of Armenia stands ready to further provide the Committee with any additional information it may consider necessary.

(*Signed*) Armen **Martirosyan**
Ambassador
Permanent Representative

Enclosure

SECOND SUPPLEMENTARY REPORT BY THE REPUBLIC OF ARMENIA TO THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1373 (2001) CONCERNING COUNTER-TERRORISM

On 8 February 2002 the Republic of Armenia submitted a report to Counter-Terrorism Committee (CTC) prepared in compliance with paragraph 6 of Security Council Resolution 1373 (2001). On 24 January 2003 the Republic of Armenia submitted a supplementary report to the CTC responding to the questionnaire contained in a letter from the CTC dated 15 July 2002. In a letter dated 18 June 2003 the CTC put forward a number of further comments/questions regarding implementation of the Resolution for the consideration of the Government of Armenia. This second supplementary report provides answers to those comments and questions.

Since the submission of the first supplementary report, the National Assembly adopted the new Criminal Code, which entered into force beginning 1 August 2003. Here is the outline of its main articles related to terrorism.

Article 217 of the *Criminal Code (Terrorism)* establishes liability for the explosion, arson, assassination, similar acts causing mass casualties, destruction of property or other dangerous outcome for the public as well as the threat to commit such an act, aimed at disruption of public security, terrorisation of the population, influencing of the decision-making of any state body and/or official or the fulfilment of the demands of criminals. Such acts are punishable by imprisonment for 8-15 years.

Article 319 of the *Criminal Code (International Terrorism)* establishes liability for the explosion, arson, similar acts, which cause death of people, mass casualties, destruction or damage to the buildings, roads, means of transport or communication, other property, committed in the territory of foreign state and aimed at provoking of international hostilities or war, destabilizing internal situation of foreign state. Such acts are punishable by imprisonment for 10-15 years or life sentence.

Article 104 of the *Criminal Code* stipulates that the murder in conjunction with terrorist act is punishable by imprisonment for 8-15 years or life sentence while *Article 104* of the *Criminal Code* establishes punishment with imprisonment for 5-10 years for causing grave injury in conjunction with terrorist act.

Article 388 of the *Criminal Code* establishes liability for the murder of a representative of a foreign state or international organisation if such acts are committed with an aim to provoke war or international tension. Such an act is punishable by imprisonment for 10-15 years. The act of violence against a representative of a foreign state or international organisation, his/her kidnapping or detention is punishable by imprisonment for 5-12 years.

- **Effective implementation of sub-paragraph 1(b) of the Resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:**
- **the only related terrorist act takes place or is intended to take place outside the country;**

- **no related terrorist act actually occurs or is attempted;**
- **no transfer of funds from one country to another takes place; or**
- **the funds are of a legal origin.**

Could Armenia please give an outline of the laws, which enable it to comply with the requirements of sub-paragraph 1(b) of the Resolution?

The norms of the *Part 7* of the new *Criminal Code* and particularly *Article 38* also establish criminal liability for the accessories to a crime: an organizer (a person who organized or led the perpetration of felony as well as established or led a gang or criminal association), an instigator (a person who incited another person to perpetrate a felony by persuasion, financial incentive, threat or otherwise) and an abettor (a person who assisted by advice, instruction, offering an information, resources or tools, eliminating obstacles, had previously promised to conceal the offender, means or tools, traces of felony, to conceal, purchase or vend the items obtained through felony).

Article 217 of the *Criminal Code (Terrorism)* in combination with the norms of the Part 7 of the same Code on establishing criminal liability for the accessories to a crime provides adequate legal basis for the prosecution of any involvement in terrorist activities including the provision of funds.

According to *Article 14* of the *Criminal Code*, an offence has to be considered as committed in the territory of Armenia and thus prosecuted by the Criminal Code of Armenia even if it started, continued or concluded in the territory of Armenia or it was carried out in complicity with persons committed an offence outside the country. Furthermore, the same Article stipulates that, regardless of the place of the crime commitment, a person is subject to criminal liability under the Criminal Code of the Republic of Armenia, if he/she is called for criminal liability within Armenia, and there are no other requirements by the international agreements.

Article 15 of the *Criminal Code* establishes liability for the citizens or residents of Armenia who committed an offence outside Armenia as long as that they have not been convicted in another country. Same Article establishes liability for foreign citizens or stateless persons who committed an offence outside Armenia providing that an offence is prosecuted by International Agreements of Armenia or is of grave nature (terrorism is considered as such) directed against the interests of Armenia or the rights or freedoms of its citizens as long as the perpetrators have not been convicted in another country.

Furthermore, the *Chapter 6* of the *Criminal Code* gives the definitions of a completed or unfinished offence, of an attempt or a preparation of offence, and stipulates a provision that the attempt and the preparation of offence must be convicted under the same Article of the General Part of the Code as the completed offence.

- **Could Armenia please provide the CTC with a progress report on the status of the draft "Law on the system of payments" which would regulate the monitoring procedure of financial institutions, as well as a progress report on the draft amendments to the 2001 "Law on Banks and Banking" which would grant the Central Bank the authority to freeze the accounts of persons on Armenia's list of persons who finance terrorism.**

- **Sub-paragraph 1(c) requires States to freeze without delay funds and financial assets or economic resources of individuals and entities, whether resident or non resident, held in Armenia , who commit or attempt to commit or facilitate or participate, in the commission of terrorist acts either inside or outside the territory of Armenia. It seems, from the reply given at page 4 of the first report, that Article 926 of the Civil Code entitles the banks to freeze the accounts and assets of individuals and organisations. However, it would appear that Article 926 only applies to funds**

and assets held in banks. Are there any legal provisions in Armenia which render it possible to freeze funds and assets held in non-banking financial institutions, insurance companies, trusts and other corporate and non-corporate bodies? Is it possible under the existing laws to freeze funds etc. held in Armenia, which are suspected of being linked to terrorism at the request of another State? In the supplementary report it is stated (at page 3) that the Ministry of Justice has denied registering the proposed instruments thereby suggesting that the Central Bank does not have the authority to freeze the accounts of persons included on a list of suspects. Based on these statements, the legal position relating to the freezing of funds is unclear. The CTC would be grateful if Armenia could clarify the position on this issue and indicate how it proposes complying with the requirements of sub-paragraph 1(c) of the Resolution. The CTC would also welcome a report on the action taken by Armenia to comply with the provisions of UN Security Council Resolution 1267.

New amendments to the *Law on the Central Bank*, *Law on Banks and Banking* and *Law on Credit Institutions*, adopted in October 2002, grant the Central Bank an authority to freeze the accounts of the persons suspected in flow of illegal assets or financing of terrorism.

Accordingly, the Central Bank adopted *Regulation No.5 "Safeguarding Banks and Credit Organisations from Circulation of Criminally Obtained Funds and Prevention of Financing of Terrorism"*, the reporting form *"On Suspicious Transactions"*, methodical guidelines and model lists of required information *"For opening a Bank Account"* and *"For servicing customers and creditors"* to be used at all banks and credit organisations. The Ministry of Justice registered the proposed instruments and they entered into force since 3 March 2003.

The *Regulation 5* stipulates that banks and credit organisations halt the operations carried out through the accounts if the account owners or a party involved in such operations are suspected in flow of illegal assets or financing of terrorism. The banks or credit organisations should report a suspicious transaction to the Central Bank within one working day. Failure to adhere to these requirements is liable to penalty under the *Law on Banks and Banking* and the *Law on Credit Institutions*.

Along with the freezing of accounts, the current legislation also provides with possibility to sequester or confiscate any other property including financial assets of the offender according to the decision of prosecution bodies in line with the *Chapters 31 and 32* of the *Code of Criminal Procedures* of Armenia.

The sequestered precious metals and stones, currency, cheques, securities and lottery tickets should be deposited with the Treasury of the Republic of Armenia, the financial assets should be transferred to the deposit account of the court hearing the case, other items must be sealed and kept with the body adopting the decision on seizure. The court makes the final judgement over the sequestered property.

The freezing of funds and assets held in Armenia at the request of another State could be implemented according to the international agreements of Armenia and in order established by the Criminal Code of Armenia. If a foreign State that signed an agreement with Armenia requires sequestering or confiscating the funds and assets involved in criminal activities, the relevant authorities implement the request in accordance with the *Chapter 54* of the *Criminal Code* as well with other relevant articles of the *Code of Criminal Procedures*.

Armenia prepares to submit a report to the Security Council Committee established pursuant to paragraph 6 of resolution 1267 the copy of which will be submitted also to Counter-Terrorism Committee. Meanwhile, the Central Bank of Armenia regularly has been provided with the consolidated lists of individuals and entities belonging to or associated with the Taliban and al-Qaida organisation as established and maintained by the 1267 Committee. However, no assets registered under the names submitted to the Bank were revealed.

• **Effective implementation of paragraph 1 of the Resolution would require States to have or to put in place measures which require professions engaged in financial transactions to report all suspicious transactions to the relevant authorities. As reported in its supplementary report (at page 4), lawyers and notaries have no obligation to report suspicious transactions. Article 18 of the Convention for the Suppression of the Financing of Terrorism requires that States impose reporting obligations on professions engaged in financial transactions. The CTC would be glad to know what steps Armenia proposes taking in this regard.**

Under current Criminal Code of Armenia, but not as professional requirement, lawyers and notaries are obliged to report any unlawful action otherwise they would be considered liable under Article 334 of the *Criminal Code* for concealing grave or particularly grave crimes (including terrorism), the offender, the means and instruments of crime and would be subject to punishment with fine in amount of 300-fold to 500-fold minimal salaries, or with arrest for 1-3 months, or with imprisonment for up to 2 years.

The *Law on Banking Secrecy* adopted in 1996 obligates the bank management to report to the law-enforcement agencies the acquired information on commitment or preparation of offence while the employees of banks are obliged to report the same information in written form to the management of a bank.

• **In order to prevent the diversion of funds to purposes other than their intended purposes and, in particular to terrorism, from religious, charitable cultural and other associations, States are required to have, or to put in place, legal and other measures to register, audit and monitor the collection and use of funds and other resources by these institutions. The CTC would welcome a report on the legal and other provisions currently applicable in Armenia in this regard.**

Religious, charitable, cultural and other associations like all commercial and non-commercial organisations and institutions, including of foreign origin, are subject to financial control by state competent authorities (taxation, customs etc) according to *the Law on Inspections Procedure in the Republic of Armenia*. Article 334 of the Criminal Code imposes reporting to the law-enforcement agencies if financial violations of criminal nature were revealed during such inspections.

The Law on Inspections Procedure in the Republic of Armenia also provides the competent authorities with the legal basis for taking due action if information is obtained that any religious, charitable, cultural and other association used or intends to provide the funds in order to carry out terrorist acts.

Furthermore, the confiscation or sequestering of property mentioned earlier in line with the *Chapters 31 and 32* of the *Code of Criminal Procedures* of Armenia could be implemented against any convicted entity irrespective of its religious, charitable, cultural or other public activities.

The Charity Programmes Coordination Committee established by the Government of Armenia, among its responsibilities, focuses on the prevention of money laundering and financing of criminal activities, including terrorism, in this field.

Legislative initiatives such as draft *Law on Insurance* or other laws regulating the activities of insurance companies, gambling houses, lottery companies, pawnshops etc. also aim the prevention of the flow of funds intended to finance illegal activities including terrorist acts. The Ministry of Finance and Economy is drafting law to establish broader and more comprehensive control over such funds.

- **Sub-paragraph 2(a) requires States to suppress the recruitment in Armenia of members of terrorist groups with a view to carrying out from Armenia terrorist activities either within or without the territory of Armenia. Article 72 of Armenia's Criminal Code, as currently constituted, does not seem adequate to deal with the requirements of this sub-paragraph in as much as it relates to the suppression of members to terrorist groups operating inside or outside Armenia. Could Armenia please apprise the CTC of the steps it proposes taking in this regard.**

- **It is stated in Armenia's first report (at page 5), in reply to sub-paragraph 2 (d), that, under Article 62 of the Criminal Code, perpetrators of terrorist acts against foreign States can be sentenced to 10 to 15 years imprisonment. Does the Armenian definition of a terrorist act include the planning, financing and facilitation of terrorist acts aimed at other states but launched from Armenian territory?**

Article 222 of the *Criminal Code* which replaced *Article 72* of the former *Criminal Code*, establishes legal liability for the formation and leading of the armed gangs aimed at the assault of individuals or organisations as well as participation in such groups and in their assaults. Such acts are punishable by the imprisonment for 8-15 years.

Article 224 of the *Criminal Code* establishes legal liability for the formation of and participation in the illegal armed groups, which could not be convicted by *Article 222*. Such acts are punishable by the imprisonment for 2-10 years.

These Articles as well as *Article 217* of the *Criminal Code (Terrorism)* in combination with the norms of the Part 7 of the same Code on establishing criminal liability for the accessories to a crime provides adequate legal basis for the prosecution of any involvement in terrorist activities including the planning, financing and facilitation of terrorist acts. Moreover, under current Armenian legislation an offence has to be considered as committed in the territory of Armenia and thus prosecuted by the Criminal Code of Armenia even if it started, continued or was completed in the territory of Armenia or it was carried out in complicity with persons who committed an offence outside the country.

Article 62 of the *former Criminal Code* (*Terrorist Act Directed against a Representative of a Foreign State*) was replaced by *Article 305* of the new *Criminal Code* which establishes liability for the murder of a state, public or political figure (with no specific mention of the state of belonging) committed to disrupt his/her activities. Such an act is punishable by imprisonment for 10-15 years or life sentence.

- **The CTC would welcome an outline of the procedure by which Armenia deals with requests from States with which it has not concluded bilateral agreement for assistance in criminal investigations and judicial proceedings.**

According to *Article 477* and other Articles of *Chapter 54* of the *Code of Criminal Procedures*, the Republic of Armenia shall reply to the request from Foreign State for assistance in criminal investigation or judicial proceeding, if that State concluded bilateral or multilateral agreement with Armenia. So far, Armenia is part of multilateral agreements within the framework of Council of Europe and CIS and has concluded bilateral agreements with Greece, Romania, Bulgaria and Georgia. Armenia, as a member of Interpol, also implements certain criminal investigations through this organisation. Nevertheless, given the interests of effective criminal investigation, the competent authorities of Armenia, for some cases, also provided assistance to States with whom Armenia has not concluded such agreements (e.g. Iran, Poland).

In the meantime, even in case of absence of the agreement for legal assistance, the law-enforcement agencies of Armenia, having received a request from a Foreign State, shall implement criminal persecution, if the offence considered as committed in the territory of Armenia under *Article 14* of the *Criminal Code*.

- **In its first Report (at page 6), Armenia reported that it had signed the Convention for the Suppression of the Financing of Terrorism pending its ratification by the National Assembly. The CTC would be grateful for a progress report on the ratification process in the National Assembly. The CTC would also welcome an outline of the steps, which Armenia proposes taking in order to implement the Convention.**

- **The CTC would welcome a progress report from Armenia in regard to its ratification of, or accession to, the International Conventions and Protocols relating to terrorism to which it has yet to become a party.**

Armenia has already ratified the following International Conventions and Protocols relating to terrorism:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;
2. Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970;
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
7. Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999.

Interstate ratification/accession process is currently underway for the following International Conventions and is expected to be concluded during the regular autumn session of the National Assembly:

1. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
2. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;
3. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999;
4. European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977.

The preliminary steps for the implementation of the Convention for the Suppression of the Financing of Terrorism have been outlined above.